

Public Statements & Remarks

Statement of Support by Commissioner Brian Quintenz Regarding the Exemption from Registration for Certain Foreign Persons Acting as Commodity Pool Operators of Offshore Commodity Pools – Notice of Proposed Rulemaking

May 28, 2020

I am pleased to support today's proposal to amend the Commission's regulation providing an exemption from registration for a foreign commodity pool operator trading on U.S. markets on behalf of foreign investors.^[1] Building on previously granted staff no-action relief, the proposal would create new possibilities for fund managers and provide for simplified compliance. At the same time, the proposal ensures that the Commodity Exchange Act continues to protect U.S. market participants. Like the Commission's proposal from January addressing its jurisdiction over foreign swap dealing activities,^[2] this rulemaking sensibly marks the boundaries of the Commission's reach into foreign derivatives trading activities in light of market realities. And like the proposal from earlier this year amending the Commission's regulations governing commodity broker bankruptcies,^[3] in this rulemaking the Commission staff applies their experience to make the Commission's regulations more efficient.

I would like to highlight certain aspects of the proposal. It would permit a foreign fund manager to satisfy the exemption's requirement that its pool does not contain funds of U.S. investors by complying with certain safe harbors, such as fund documentation disclosures.^[4] The proposal recognizes that the manner in which fund interests are sold in the real world often makes it impossible for a fund manager to make a blanket attestation that there is no U.S. investment in a given commodity pool. I am also particularly pleased to see that U.S. affiliates of foreign pools would have the ability to contribute initial capital to those pools.^[5]

I applaud the staff of the Commission for continuing their work despite the COVID-19 pandemic and I look forward to reviewing the industry's comments.

^[1] CFTC regulation 3.10(c)(3) (17 C.F.R. 3.10(c)(3)).

^[2] Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants (Notice of Proposed Rulemaking), 85 Fed. Reg. 952 (Jan. 8, 2020).

^[3] Bankruptcy Regulations (Notice of Proposed Rulemaking) issued by the Commission on Apr. 14, 2020, publication in the Federal Register pending.

^[4] Proposed regulation 3.10(c)(3)(iv).

^[5] Proposed regulation 3.10(c)(3)(iii).

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